

REMARKS

Claims 1-3 and 5-39 are pending in the application with claims 1, 22, 23, and 30 being the independent claims. Claim 4 is canceled without prejudice to or disclaimer of the subject matter therein. Claims 1, 5, 9, 22, 23, and 30 are amended. Claim 39 is newly added. Applicants respectfully request reconsideration of the application.

Independent Claim 1

The Office Action indicated that claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by International Publication No. WO 03/039400 to Huppert et al. (“Huppert”). However, claim 1 is amended to include the features of original dependent claim 4 to more particularly define the invention, and claim 4 is cancelled.

Claim 1 now recites:

A prosthetic device for anterior-oblique insertion into an intervertebral space, comprising a first component having a first flange for engaging a first vertebra from an anterior-oblique approach, the first flange being angled relative to the longitudinal and transverse axes of the first component . . . wherein the first component is triangular in shape to define first, second and third side portions.

Claim 4 was rejected 35 U.S.C. § 103 as being allegedly unpatentable in view of Huppert. With respect to claim 4, the Office Action stated that although Huppert “did not teach a device having a triangular shape . . . this particular shape is nothing more than one of numerous configurations one of ordinary skill in the art would have found obvious for the purpose of providing mating surface in the prosthetic device of Huppert et al.” Office Action, page 4. However, the specification states that the triangular shape “facilitates an oblique insertion approach from either the left or right side of the spine.” Paragraph 180. While the Examiner may allege that devices with shapes other than triangular may be inserted, such a statement should not render a device having a triangular component unpatentable when the prior art does

not teach or suggest a triangular component and the triangular component facilitates an oblique insertion approach. Huppert does not teach or suggest a device having a component with a triangular shape. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 3

Claim 3 depended from original claim 1 and was rejected as being anticipated by Huppert. Claim 3 recites, “wherein the first and second flanges are adapted to be offset relative to one another upon insertion of the prosthetic device into the intervertebral space.” The Office Action stated that “the flanges are adapted to aligned either parallel or offset relative to each other, as best seen in Fig. 4.” Office Action, page 3. Applicants traverse this assertion. Fig. 4 in Huppert discloses that its winglet may be oriented for insertion from directions other than the one shown. Huppert, page 7, lines 15-19. It does not disclose that the winglets are adapted to be offset, as recited in claim 3. Because Huppert does not disclose any device with flanges that are adapted to be offset relative to one another upon insertion of the prosthetic device, claim 3 should be allowable over Huppert. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 9

Claim 9 depended from original claim 1 and was rejected as being anticipated by Huppert. By this paper, claim 9 is amended to further define its recited gap. Claim 9 recites that the gap extends substantially through the first flange from an outer edge of the flange to a surface portion of the first component.” Huppert does not disclose such a flange having a gap as claimed. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 10

Claim 10 depended from original claim 1 and was rejected as being anticipated by Huppert. Claim 10 recites a first flange that “includes a sharp portion for engaging and penetrating the first vertebra.” Huppert does not disclose such a flange having a sharp portion. Huppert discloses that its winglet (2) includes notches or indentations (25). Page 8, lines 11-14. Yet there is no indications that these are sharp portions as claimed. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 14

Claim 14 depended from original claim 1 and was rejected as being anticipated by Huppert. Claim 14 is directed to prosthetic device with a first component that includes “a first articular surface having a projection” and a second component that includes “a second articular surface having a recess, the projection and the recess being adapted to engage one another to permit articulating motion between the first and second components.” Huppert discloses a first and a second component separated by a nucleus 13. Accordingly, in Huppert, the projection of the first component does not engage the recess of the second component. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Independent Claim 22

The Office Action indicated that claim 22 was rejected under 35 U.S.C. § 102(b) as being anticipated by Huppert. Also, claim 22 was identified as being rejected under 35 U.S.C. §103 as being unpatentable in view of Huppert and U.S. Patent No. 6,936,071 to Marnay et al. (“Marnay”). Claim 22 now recites:

A prosthetic component for forming a portion of a prosthetic device, comprising a first surface having a flange for engaging a vertebra from an anterior-oblique approach, . . . wherein the first component is triangular in shape to define first, second and third side portions.

Huppert does not disclose a prosthetic component as claimed. Therefore, claim 22 is not anticipated by Huppert. Marnay also fails to cure the deficiency because Marnay does not teach or suggest such a prosthetic component. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Independent Claim 23

The Office Action indicated that claim 23 was rejected under 35 U.S.C. § 102(b) as being anticipated by Huppert. Claim 23 is amended only to more particularly define the invention and not to limit the scope of the claim. Huppert fails to disclose all the features of claim 23, and therefore, does not establish a prima facie rejection. Claim 23 recites:

A prosthetic device for anterior-oblique insertion into an intervertebral space, comprising:

a first component, comprising:

a first articular surface and an opposed first bearing surface, the first articular surface forming a projection; and

a first flange extending from the first bearing surface, the first flange being angled relative to the longitudinal and transverse axes of the first component; and

a second component, comprising:

a second articular surface and an opposed second bearing surface, the second articular surface forming a recess adapted to engage with the projection to provide for

articulating motion between the first and second components; and

a second flange extending from the second bearing surface, the second flange being angled relative to the longitudinal and transverse axes of the second component.

Huppert fails to establish a prima facie rejection because Huppert fails to disclose all the features of claim 23. For example, Huppert fails to disclose a first component with a first articular surface and a flange and a second component “forming a recess adapted to engage with the projection to provide for articulating motion between the first and second components.” Instead, Huppert discloses two components separated by a nucleus. Thus, Huppert does not disclose a recess of the second component adapted to engage with the projection as recited in claim 23. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 26

Claim 26 depended from original claim 23 and was rejected as being unpatentable over Huppert and Marnay. Claim 26 recites that the first component is “triangular in shape to define first, second and third side portions.” Neither Huppert nor Marnay discloses this feature. The specification states that the triangular shape “facilitates an oblique insertion approach from either the left or right side of the spine.” Paragraph 180. While the Examiner may allege that devices with shapes other than triangular may be inserted, such a statement should not render a device having a triangular component unpatentable when the prior art does not teach or suggest a triangular component and the triangular component facilitates an oblique insertion approach. Huppert does not teach or suggest a device having a component with a triangular shape. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Independent Claim 30

The Office Action indicated that claim 31 was rejected under 35 U.S.C. § 102(b) as being anticipated by Huppert. Claim 31 is now amended to include additional features, including that the “the first component is triangular in shape to define first, second and third side portions.” Huppert does not disclose a method including providing a prosthetic device having this feature. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 36

Claim 36 depended from original claim 30 and was rejected as being anticipated by Huppert. Claim 36 is directed to a method including “inserting a screw into the first vertebra.” Huppert does not disclose this feature. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Claim 38

Claim 38 depended from original claim 1 and was rejected as being anticipated by Huppert. Claim 38 recites flange with a “hole . . . adapted to receive a fixation element therethrough.” Huppert does not disclose such a flange. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Dependent Claims

Claims 2, 3, 5-7, 9-21, 37, and 38, claims 24-29, and claims 31-36 depend from and add additional features to independent claims 1, 23, and 30, respectively. Each dependent claim is believed to separately distinguish over the art of record at least, for example, for the same reasons discussed above with respect to their respective independent claims. Therefore, in addition to the independent reasons discussed above, these claims should be allowable for at least the reasons

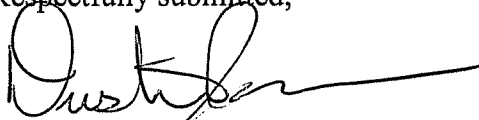
that the independent claims should be allowable. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection and allow these claims.

Conclusion

For at least the reasons set forth above, Applicant respectfully requests that the Examiner reconsider and issue a formal notice of allowance.

Please grant any extension of time required to enter this response and charge any additional fees required by this paper to our Deposit Account No. 08-1394.

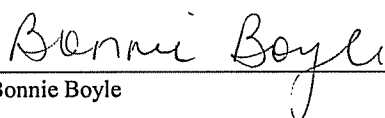
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 _____ Bonnie Boyle